DEPARTMENT OF STATE REVENUE

01-20160112.LOF

Letter of Findings: 01-20160112
Individual Income Tax
For the Year 2011

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

In addressing the Department's assessment of additional Indiana income tax, Individuals supplied sufficient documentation to establish that they were Texas residents during 2011 and did not establish Indiana residency until 2012.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37(a)(2); IC § 6-1.1-12-37(f); IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); 45 IAC 3.1-1-22.

Taxpayers argue that they were not residents of Indiana during 2011 and not required to file Indiana income tax return as full-year Indiana residents that year.

STATEMENT OF FACTS

Taxpayers are a married couple who are current Indiana residents. The Indiana Department of Revenue ("Department") concluded that they were full-time residents during 2011. The Department issued Taxpayers a letter dated December 2015 which stated that "[y]ou have shown an intention to change domicile and remain in Indiana permanently or indefinitely." The Department concluded that "your income is taxable to Indiana as of the date you established domicile in 2011."

Taxpayers disagreed with that decision and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representative explained the basis for their protest. This Letter of Findings results.

I. Individual Income Tax - Residency.

DISCUSSION

The issue is whether Taxpayers were Indiana residents during 2011 and necessarily required to file an Indiana individual income tax return.

Taxpayers state that they were Texas residents during 2011, purchased an Indiana home that year, but did not move into the Indiana home until September 2012.

Tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person . . . ." IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . . ." IC § 6-3-1-12.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." 45 IAC 3.1-1-22. For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." Id. Additionally, "Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur." Id. "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." Croop v. Walton, 157 N.E. 275, 278 (Ind. 1927).

In State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, in relevant part, that:

> Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. Id. at 1317 (Internal citations omitted).

The Indiana Supreme Court concluded that:

> Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1318 (Internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new permanent residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." In the Matter of Evrard, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." 45 IAC 3.1-1-22. Instead, the determination is made on a case by case basis. Id. Relevant facts to be considered include:

(1) Purchasing or renting residential property
(2) Registering to vote
(3) Seeking elective office
(4) Filing a resident state income tax return or complying with the homestead laws of a state
(5) Receiving public assistance
(6) Titling and registering a motor vehicle
(7) Preparing a new last will and testament which includes the state of domicile. Id.

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that the taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. Croop, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

In order to change one's domicile from Indiana to an out-of-state location, the law requires the "intent of establishing a home at that place," 45 IAC 3.1-1-22, along with "acts evidencing [an] intention to make the new domicile a home in fact . . . ." Bayh, 521 N.E.2d at 1317.

However, the law also requires a simultaneous manifestation of an intent to abandon the Indiana domicile. Id. As the law states, "[A] person has only one domicile at a given time . . . ." 45 IAC 3.1-1-22. Significantly, Taxpayers purchased their Indiana home during 2011 and benefited from a Homestead Credit on that home. In doing so, Taxpayers necessarily verified that the Indiana home was their "principal place of residence" and, by doing so, took advantage of the typically significant tax advantage associated with claiming the credit. IC § 6-1.1-12-37(a)(2).

Taxpayers concede that they purchased an Indiana home during 2011 and claimed a Homestead Credit on that home. IC 6-1.1-12-37(f) in part states:

> If an individual who is receiving the deduction provided by this section or who otherwise qualifies property for a deduction under this section:
> (1) changes the use of the individual's property so that part or all of the property no longer qualifies for the deduction under this section; or
> (2) is no longer eligible for a deduction under this section on another parcel of property because:
> (A) the individual would otherwise receive the benefit of more than one (1) deduction under this chapter; or
> (B) the individual maintains the individual's principal place of residence with another individual who receives a deduction under this section; the individual must file a certified statement with the auditor of the county, notifying the auditor of the change of use, not more than sixty (60) days after the date of that change.

In support of their argument that they did not establish an Indiana residence until 2012, Taxpayers provided documentation supporting their contention that they were Texas residents during 2011. Taxpayer provided a 2011 W-2 form listing a Texas employer and Taxpayers' Texas address. Taxpayers provided a copy of Taxpayers' 2011 federal income tax return indicating a Texas address. Taxpayers provided copies of their then current Texas drivers' licenses. Taxpayers provided copies of their Texas voters' registration. Taxpayers provided a copy of a 2011 payroll check listing a Texas employer and providing Taxpayers' home address. Taxpayers provided a letter from their Texas employer stating that husband was employed in Texas until September 2012. Taxpayers provided financial statement indicating that they paid a security deposit, rent, utility expenses, on a Texas apartment during 2011 and that they did not move out of that Texas apartment until September 2012.

Taxpayers further provided a copy of a letter from the Indiana Hamilton County auditor in response to their request to void the 2011 Homestead Credit claimed during 2011. The letter states that "they were not Indiana residents in 2011 and they wanted to have the homestead removed for the 2011 pay 2012 tax year." The auditor declined on the ground that the "auditor's office cannot remove the homestead deduction for 2011 pay 2012 because we are only allowed to adjust taxes for the previous 3 years, per statute." However, the auditor explained that the previous home owners "did have a homestead deduction" and that if the homestead credit had been removed, Taxpayers' "would have still reflected the homestead deduction as a carryover deduction from the previous owners."

Evaluating the documentation on a "case by case basis" in order to determine their "requisite intent," Taxpayers have established that they did not abandon their Texas residence until 2012 and were not Indiana residents until that year.

Taxpayers were not required to file a 2011 Indiana income tax return.

FINDING

Taxpayers' protest is sustained.

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